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SENATE BILL 923

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Mark Boitano

AN ACT

RELATING TO REAL ESTATE; REVISING DEADLINES FOR THE FUNDING OF  
REAL ESTATE TRANSACTIONS; AMENDING AND REPEALING SECTIONS OF  
THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-21-2 NMSA 1978 (being Laws 1983,  
Chapter 86, Section 2, as amended) is amended to read:

"58-21-2. DEFINITIONS. -- As used in the Mortgage Loan  
Company and Loan Broker Act:

A. "affiliate" means a person who, directly or  
indirectly, through one or more intermediaries, controls or is  
controlled by or is under common control with another person;

B. "closing agent" means a person, including a  
title insurance agent or title insurance company, that acts in  
the normal course of business in a fiduciary capacity as a

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1 disinterested third party for the seller and buyer of real  
2 property for the purpose of consummating a sale of real  
3 property, including the performance of the following  
4 functions:

5 (1) preparation of deeds, mortgages,  
6 promissory notes, deeds of trust, real estate contracts,  
7 assignments or other documents incidental to the sale as  
8 permitted by law;

9 (2) calculations and disbursements of  
10 prorated taxes, insurance premiums, utility bills and other  
11 charges incidental to the sale;

12 (3) preparation of sellers' and buyers'  
13 closing statements;

14 (4) supervision of signing of documents;

15 (5) collection and disbursement of down  
16 payments, commissions of real estate licensees, fees and other  
17 charges pursuant to a sales agreement; and

18 (6) recordation of documents;

19 C. "division" means the financial institutions  
20 division of the regulation and licensing department;

21 D. "director" means the director of the financial  
22 institutions division of the regulation and licensing  
23 department;

24 E. "dwelling" means a residential structure,  
25 including a home, individual condominium unit, manufactured

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1 home or modular home, that contains one to four units and is  
2 permanently attached to real property;

3 F. "lender" means a person or government agency  
4 making a mortgage loan;

5 G. "loan broker" means any person who acts as a  
6 finder or agent of a lender or borrower of money for the  
7 purpose of procuring a mortgage loan, or both;

8 H. "mortgage loan" means a loan secured by a  
9 dwelling permanently affixed to real property; ~~and~~

10 I. "mortgage loan company" means a person who,  
11 directly or indirectly:

12 (1) holds himself out as being able to serve  
13 as an agent for any person in an attempt to obtain a mortgage  
14 loan;

15 (2) holds himself out as being able to serve  
16 as an agent for a person who makes mortgage loans; or

17 (3) holds himself out as being able to make  
18 mortgage loans; and

19 J. "net loan funds" means the mortgage loan  
20 amounts specified in the note and mortgage less lender-  
21 retained fees, as specified in the lender's instruction to the  
22 closing agent. "

23 Section 2. Section 58-21-23.2 NMSA 1978 (being Laws  
24 2005, Chapter 191, Section 3) is amended to read:

25 "58-21-23.2. FUNDING OF REAL ESTATE TRANSACTIONS--

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1 ENFORCEMENT. - -

2 A. Unless the [~~consideration~~] net loan funds  
3 necessary to complete a purchase of real property [~~has~~] have  
4 been previously delivered to the seller or to the closing  
5 agent, a lender shall [~~comply with the following:~~

6 ~~(1) funds in an amount sufficient to complete~~  
7 ~~the purchase of real property shall be provided to the closing~~  
8 ~~agent at the same time the lender provides to the closing~~  
9 ~~agent the documentation to be reviewed and executed by the~~  
10 ~~parties to the real estate transaction; and~~

11 ~~(2) within two business days from the time~~  
12 ~~the lender receives copies of all previously required~~  
13 ~~documentation to the real estate transaction, including~~  
14 ~~documentation executed by the parties to that transaction, the~~  
15 ~~lender shall] deliver the required net loan funds within two~~  
16 ~~business days of the time that the lender deems the closing~~  
17 ~~agent has fulfilled the requirements of the closing agent's~~  
18 ~~duties, except for the recordation of documents, and shall:~~

19 [~~(a)~~] (1) authorize the closing agent to  
20 record with the county clerk all documents necessary to  
21 complete the real estate transaction and release the proceeds  
22 of the real estate transaction in accordance with agreed upon  
23 escrow instructions;

24 [~~(b)~~] (2) advise the closing agent of any  
25 funding conditions, as set forth in the lender's escrow

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1 instructions, that have not been satisfied and instruct the  
2 closing agent in writing what is to be done with any of the  
3 lender's funds held in escrow; or

4 [~~(c)~~] (3) advise the closing agent that the  
5 documentation for the real estate transaction does not satisfy  
6 the lender's escrow instructions, specify the manner in which  
7 that documentation does not satisfy those instructions and  
8 instruct the closing agent in writing what is to be done with  
9 any of the lender's funds held in escrow.

10 B. In the event a lender does not comply with the  
11 requirements of Subsection A of this section, unreasonably  
12 refuses to approve the documentation necessary to complete a  
13 real estate action or unreasonably delays authorization of the  
14 recordation of closing documents and release of proceeds of a  
15 real estate transaction, the director of the division may,  
16 upon receipt of a complaint and in accordance with the  
17 procedures set forth in the Mortgage Loan Company and Loan  
18 Broker Act, suspend or revoke any state registration or  
19 license issued to the lender for a period not to exceed one  
20 year. "

21 Section 3. REPEAL. -- Section 58-21-23.1 NMSA 1978 (being  
22 Laws 2005, Chapter 191, Section 2) is repealed.

23 Section 4. EFFECTIVE DATE. -- The effective date of the  
24 provisions of this act is July 1, 2007.

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